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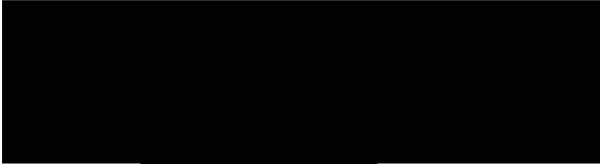
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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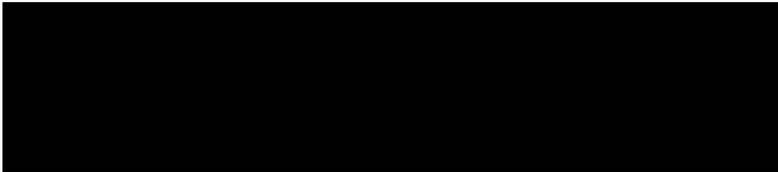
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea. The record reveals that the applicant submitted forged documentation when he applied for a change of status from B-2 visitor for pleasure to F-1 student. The applicant was thus found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured an immigration benefit by fraud or willful misrepresentation.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his lawful permanent resident spouse and daughter, born in September 1987.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated February 15, 2006.

In support of the appeal, counsel submits a brief, dated March 2, 2006, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien....

¹ The applicant does not contest the acting district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Numerous references are made to the hardships the applicant's lawful permanent resident daughter, born in September 1987, would face were the applicant removed from the United States. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse, a lawful permanent resident, is the only qualifying relative, and hardship to the applicant and/or his daughter cannot be considered, except as it may affect the applicant's spouse. It has not been established that the emotional and/or financial repercussions to the applicant and/or his daughter due to the applicant's inadmissibility would cause the applicant's spouse extreme hardship.

Counsel contends that the applicant's lawful permanent resident spouse will suffer emotional hardship if the applicant is removed from the United States. As the applicant's spouse states in her declaration:

After all this time of finally being able to find stability and happiness our family was hit with a very hard blow. With the possibility that our family is going to be torn apart, that my husband [the applicant] will have to leave us, life just doesn't seem right. My family and I are so apprehensive and shocked that we can't eat, we can't sleep and we can't really function in our daily lives anymore....

Without my husband I can't function... Without him, my family will break apart so easily....

I need him to support me and be there for me and work with me....

Affidavit of [REDACTED]

No documentation from a mental health professional has been provided to establish that the applicant's spouse will suffer extreme emotional hardship were the applicant removed from the United States. In addition, the record indicates that the applicant's spouse has been gainfully employed in the past; the applicant's immigration situation clearly has not impeded the applicant's spouse's ability to work and assist in maintaining the household. Moreover, the record indicates that the applicant's spouse has a twenty-one year old daughter; it has not been established that she would

be unable to assist the applicant's spouse should the need arise. Finally, the applicant has failed to document that the applicant's spouse, a native of Korea, would be unable to visit the applicant on a regular basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Counsel further references the financial hardship the applicant's lawful permanent resident spouse would experience were the applicant removed from the United States. As counsel asserts,

What the Immigration Service failed to consider was more recent and therefore more relevant financial data that was already contained as a part of the record. Specifically, Petitioner [the applicant] and his wife's 2003 joint income tax return reflects total wages earned in the amount of \$16,800. In 2004, Petitioner and his wife's joint income tax return reflects total wages earned in the amount of \$27,800. In 2005, Petitioner's and his wife's joint income tax return reflects total wages earned in the amount of \$9,800.

Further...Petitioner's wife does not have a job, as she is unemployed. In fact, the only income generated by this family is through [REDACTED] [the applicant's] employment. He is currently working as a temporary sushi chef.... His position...is ending this month and thereafter, [REDACTED] and his wife will assume the management of a friend's small restaurant.... These new roles for both [REDACTED] and his wife do not guarantee any base salary—they will only earn a wage if the restaurant makes money.

In addition, the USCIS Decision erroneously states that Mr. and Mrs. [REDACTED] own their own sushi restaurant. This is not true—they have never owned a restaurant. In fact, they were only, at one time, interested in acquiring a restaurant (hence the submission of a lease contract that was not yet finalized). The acquisition of the restaurant fell through....

Brief in Support of Appeal, dated March 2, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation has been provided with the appeal outlining the applicant’s and his family’s current income and expenses, assets and liabilities, to establish that without the applicant’s physical presence in the United States, his spouse will experience extreme financial hardship. Moreover, it has not been established that the applicant’s spouse, previously employed as an alteration tailor, would be unable to resume employment in her area of expertise. *See Letter of Employment from [REDACTED] Owner, [REDACTED]*, dated May 15, 2001. In addition, no evidence has been provided to substantiate that the applicant, a sushi chef, is unable to obtain gainful employment in Korea, thereby providing him with the ability to support himself and assist with the U.S. household expenses. As previously referenced, a general assertion by the applicant that he will not be able to obtain employment in Korea does not suffice to establish hardship.

Finally, the record indicates that the applicant’s daughter is an adult; it has not been established that she would be unable to assist her mother with respect to her finances, should she find herself in a financial predicament due to the applicant’s inadmissibility. Even if the applicant’s daughter were still in school, presumably she would be eligible to obtain student loans and/or part-time employment, thereby alleviating the financial strain on her mother. While the applicant’s spouse may need to make adjustments with respect to her financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant’s spouse extreme financial hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why his spouse is unable to relocate to Korea, her birth country, or any other country of their choosing, to accompany the applicant were he removed.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful permanent resident spouse will face extreme hardship if the applicant is removed. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that her financial, emotional and/or psychological hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional and/or psychological hardship she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.